IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 518 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI MAGANBHAI PARMAR

Versus

KANTABEN WIDOW OF VALJIBHAI M PARMAR

Appearance:

MR BM GUPTA for Petitioner

MR SA BAQUI for Respondent No. 1

MR KC SHAH, ADDL. PUBLIC PROSECUTOR for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/08/2000

ORAL JUDGEMENT

The complainant in Sessions Case No.290 of 1996 has filed this revision against the order dated 21.07.1997 passed by the Additional Sessions Judge, Court

No.9, discharging the accused u/s 227 of the Code of Criminal Procedure for alleged commission of offences punishable u/s 306 read with Section 34 of IPC.

2 The list has been revised four times but, none appears for respondents nos.1 to 4. Shri K.C. Shah appears for respondent no.6. Shri B.M. Gupta appears for the revisionist. As such, the learnedd counsel for the revisionist and Shri K.C.Shah have been heard and the impugned order has been examined.

3 It is a matter of shock and surprise that the State of Gujarat - respondent no.6 has not chosen to file revision against the impugned order dated 21.07.1997 which is patently an illegal order and beyond the scope of Section 227 of the Code of Criminal Procedure. At the time of framing of charge the learned Additional Sessions Judge was required to consider the material placed before him by the prosecution and after considering the submissions from the side of the prosecution as well as from the side of the defence, if he would have found that there was no prima facie material for proceeding against the accused, then and then only he could have discharged the accused u/s 227 of the Code of Criminal Procedure. The impugned order shows that the learned Additional Sessions Judge has actually prejudged the case without receiving the evidence. A post mortem report was very lightly considered by the trial Judge. Despite the observations in the Post Mortem that the death was caused due to irritant type of poison, the learned Additional Sessions Judge finally concluded that this could not be any evidence or substance to hold that it was a case of suicide. Such finding is not to be accepted rather it has to be deprecated with all force at command. Likewise other findings have been given by the trial Judge as if he has recorded the entire evidence and has applied his mind to the evidence on record and law relating to abetment for offence committted. Simply on conjectures and surmises the learned Additional Sessions Judge has observed that by no stretch of imagination the act of accused nos.2 to 5, though may be illegal or immoral, can be branded as abetment leading deceased Valjibhai to commit suicide and therefore the questionof framing of charge against accused nos.2 to 5 does not arise. This finding and observaton is contrary to all settled principles enunciated while appreciating and interpreting Section 227 of the Code of Criminal Procedure. Similarly without receiving the evidence an abrupt finding has been given that the act of accused no.1 does not amount to abetment.

4 In addition to this, another illegality was committed by the Additional Sessions Judge inasmuch as a detailed application dated 20.5.1997 was filed by the complainant requesting for reinvestigation u/s 173(8) of the Code of Criminal Procedure. The stand of the complainant was that the investigation was not properly conducted and if proper investigation had been conducted, the material would have come before the Additional Sessions Judge for altering the charge u/s 302 of IPC. This application was not at all considered by the learned Additional Sessions Judge. When the stand of the State of Gujarat is such that it did not decide to prefer revision against patently illegal order dated 21.07.1997, which is under challenge in this revision, the complainant was justified in moving the application dated 20.5.1997 u/s 173(8) of the Code of Criminal Procedure and this application should have been decided by the learned Additional Sessions Judge. Since this application was not at all considered and abruptly all the accused have been discharged, there is no option left but to quash and set aside the impugend order dated 21.7.1997. Accordingly, the impugned order dated 21.7.1997 is set aside. Sessions Case No.290 of 1996 is sent back to the Additional Sessions Judge, Court NO.9, who shall summon the accused again and shall also give opportunity of hearing to the complainant on his application dated 20.5.1997 and shall also hear the Public Prosecutor as well as defence counsel and shall thereafter pass orders in accordance with law.

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